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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 31 2003

UICs: 401.06-00
401.06-02
408.00-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

Taxpayer C:

Date 1:

Date 2:

Date 3:

Date 4:

IRA X:

Company M:

State N:

County O:

Sum 1:

Dear Ms. :

This is in response to the , request for letter rulings under § § 401(a)(9) and 408(d)(3) of the Internal Revenue Code submitted on your behalf by your authorized representative. The request for letter rulings is based on the following facts and representations.

Taxpayer A, whose date of birth was Date 1, 1931, died testate on Date 2, 2002, at age 71 having reached his "required beginning date" as that term is defined in § 401(a)(9)(C) of the Internal Revenue Code. Taxpayer A was survived by three children

including Taxpayer B and Taxpayer C. Taxpayer B, Taxpayer A's daughter, was alive as of the date of this ruling request.

As of his date of death, Taxpayer A was the owner of an individual retirement arrangement, IRA X, maintained with Company M. IRA X has a value of approximately Sum 1.

Taxpayer A's Last Will and Testament, dated Date 3, 1999, was duly admitted to probate in County O, State N. Item Four of Taxpayer A's Last Will and Testament provides for the outright distribution of Taxpayer A's estate to his three children in equal shares. On Date 4, 2002, Taxpayer C, Taxpayer A's son, was appointed sole executor of Taxpayer A's estate.

Taxpayer A did not designate a beneficiary of his IRA X. Thus, Taxpayer A's estate is the beneficiary thereof.

Taxpayer B proposes to transfer, by means of a trustee to trustee transfer, her one third interest in Taxpayer A's IRA X into a separate IRA titled "Taxpayer A (Deceased) IRA f/b/o Taxpayer B, beneficiary thereof". Taxpayer B then proposes to receive Code § 401(a)(9) minimum required distributions from her beneficiary IRA beginning in calendar year 2003 over Taxpayer A's remaining life expectancy.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That Taxpayer B's one-third interest of Taxpayer A's IRA X can be segregated and held in a separate IRA for purposes of determining Taxpayer B's Code § 401(a)(9) minimum required distributions;

2. that the IRA created by means of a trustee to trustee transfer, which will be titled "Taxpayer A (Deceased) f/b/o Taxpayer B, beneficiary thereof", constitutes an inherited IRA under Code § 408(d)(3)(C);

3. that Taxpayer B may receive Code § 401(a)(9) required distributions from the IRA set up in the name of Taxpayer A for her benefit over Taxpayer A's remaining life expectancy using the age of Taxpayer A as of Taxpayer A's birthday in the calendar year of Taxpayer A's death reduced by one for each calendar year pursuant to § 1.401(a)(9)-5 of the "Final" Income Tax Regulations, Question and Answer 5(a)(2); and

4. that the transfer of Taxpayer B's one third interest in Taxpayer A's IRA X to the above described beneficiary IRA will not constitute a taxable distribution

within the meaning of Code § 408(d)(1) to Taxpayer B and does not constitute a rollover as that term is used in Code § 408(d)(3).

With respect to your ruling requests, Code § 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee-

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Code § 401(a)(9)(B)(i) provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (after his required beginning date), the remaining portion of his interest must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

With respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003

§1.401(a)(9)-4 of the "Final" regulations, Q&A-4, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of

death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

§1.401(a)(9)-4 of the "Final" regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Q&A-5 of §1.401(a)(9)-4 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements are met:

§1.401(a)(9)-5 of the "Final" regulations, Q&A-5(a)(2) provides, in summary, that if an employee dies on or after his required beginning date without having designated a beneficiary, then post-death distributions must be made over the remaining life expectancy of the employee determined in accordance with paragraph (c) (3) of this A-5.

§ 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(3), provides, in general, that, with respect to an employee who does not have a designated beneficiary, the applicable distribution period measured by the employee's remaining life expectancy is the life expectancy of the employee using the age of the employee as of the employee's birthday in the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year of the employee's death.

§ 1.401(a)(9)-9 of the "Final" regulations, Q&A-1, provides the relevant Single Life Expectancy Table.

§ 1.401(a)(9)-8 of the "Final" regulations, Q&A-2(a), provides the "separate account" rules with respect to defined contribution plans. A "separate account" is an account under which the beneficiary or beneficiaries differ from the beneficiary or beneficiaries of the other accounts. In general, if separate accounts are set up, for years subsequent to the calendar year containing the date on which the separate accounts were established, or the date of death if later, a separate account under a plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account satisfy the requirements of Code § 401(a)(9). Instead, the rules in Code § 401(a)(9) apply separately to each separate account under the plan.

§ 1.401(a)(9)-8 of the "Final" regulations, Q&A-3, provides that a separate account is a separate portion of an employee's benefit which reflects the separate interest of an employee's beneficiary under the plan as of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions and forfeitures, for the period prior to the

establishment of the separate accounts on a pro-rata basis in a consistent and reasonable manner among the separate accounts.

§1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit. In like manner, the "separate account" rules are not available to beneficiaries of an estate with respect to the estate's interest in an employee's plan or IRA interest.

Code § 408(d)(1) provides, generally, that, in accordance with the rules of § 72, amounts paid or distributed from an IRA are included in the gross income by the payee or distributee.

Code § 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Taxpayer B is Taxpayer A's daughter.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code § 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Finally, Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary.

The issues raised in this ruling request are whether a beneficiary-daughter of an IRA holder may, after the death of the IRA holder, transfer her one-third interest in the deceased's IRA to an IRA set up to solely benefit her, and whether she may receive distributions from her beneficiary IRA over the deceased's remaining life expectancy without regard to the distribution decisions made by the other IRA beneficiaries.

Although neither the Code nor the "Final" regulations promulgated under Code § 401(a)(9) preclude the posthumous division of IRA X into more than one IRA, the "Final" regulations do preclude "separate account" treatment for Code § 401(a)(9) purposes where amounts pass through an estate.

In this case, absent Taxpayer B's decision to transfer, by means of a trustee-to-trustee transfer, her one-third interest in Taxpayer A's IRA X to her beneficiary IRA, as described above, distributions of the entire IRA X interest, including Taxpayer B's one-third, would have to be made over Taxpayer A's remaining life expectancy in accordance with § 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(3). After the trustee to trustee transfer, Taxpayer B will receive required distributions over Taxpayer A's remaining life expectancy. Thus, the trustee to trustee transfer will have no effect on the timing or amount of minimum required distributions.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code § 408(d).

Finally, since Taxpayer B is Taxpayer A's daughter, her 1/3 interest in Taxpayer A's IRA X constitutes an inherited IRA as that term is defined in Code § 408(d)(3)(C).

Thus, based on the specific facts and representations surrounding this ruling request, we conclude as follows:

1. that Taxpayer B's one-third interest of Taxpayer A's IRA X can be segregated and held in a separate IRA for purposes of receiving distributions. Furthermore, with respect to determining over what period of time Taxpayer B must receive Code § 401(a)(9) minimum required distributions see our response to your third letter ruling request (below);

2. that the IRA created by means of a trustee to trustee transfer, which will be titled "Taxpayer A (Deceased) f/b/o Taxpayer B, beneficiary thereof", constitutes an inherited IRA under Code § 408(d)(3)(C);

3. that Taxpayer B may receive Code § 401(a)(9) required distributions from the IRA set up in the name of Taxpayer A for her benefit over Taxpayer A's remaining life expectancy using the age of Taxpayer A as of Taxpayer A's birthday in the calendar year of Taxpayer A's death reduced by one for each subsequent calendar year pursuant to § 1.401(a)(9)-5 of the "Final" Income Tax Regulations, Question and Answer 5(a)(2); and

4. that the transfer of Taxpayer B's one third interest in Taxpayer A's IRA X will not constitute a taxable distribution within the meaning of Code § 408(d)(1) to Taxpayer B and does not constitute a rollover as that term is used in Code § 408(d)(3).

This ruling letter is based on the assumption that IRA X and the beneficiary IRA created after the trustee to trustee transfer either have met, are meeting, or will meet the requirements of Code § 408 at all times relevant thereto.

Pursuant to a power of attorney on file with this office, the original of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose